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Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC,

Defendant.

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

DAVID IVAN LUSTIG,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04554 (SMB)

**STIPULATION TO AMENDMENT OF TRUSTEE'S COMPLAINT**

**WHEREAS**, on December 1, 2010, the plaintiff, Irving H. Picard as trustee (the "Trustee") for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. ("SIPA"), and the substantively consolidated estate of Bernard L. Madoff individually, commenced the above-captioned adversary proceeding (the "Adversary Proceeding") in the Bankruptcy Court against defendant David Ivan Lustig ("Defendant", and together with the Trustee, the "Parties") and NTC & Co. LLP, as former custodian of an Individual Retirement Account for the benefit of Defendant, and thereafter NTC & Co. LLP was dismissed from the Adversary Proceeding;

**WHEREAS**, on February 21, 2014, the Bankruptcy Court entered a Case Management Order Regarding Certain Pending Motions to Dismiss in hundreds of adversary proceedings pending before the Court, not including this Adversary Proceeding (the "Omnibus Proceedings");

**WHEREAS**, on December 22, 2014, Defendant filed a motion to dismiss the Adversary Proceeding;

**WHEREAS**, on June 2, 2015, the Bankruptcy Court granted in part and denied in part the motions to dismiss in the Omnibus Proceedings (the "Omnibus Motion to Dismiss Decision"). *Securities Investor Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 531 B.R. 439 (Bankr. S.D.N.Y. 2015);

**WHEREAS**, on June 22, 2015, the Supreme Court of the United States denied the Trustee's writ of certiorari regarding 11 U.S.C. § 546(e) (the "Supreme Court 546(e) Denial"), therefore 11 U.S.C. § 546(e) is applicable to this proceeding. *Picard v. Ida Fishman Revocable Trust*, 135 S. Ct. 2859 (2015);

**WHEREAS**, although Defendant was neither a party to, nor joined in the Omnibus

Proceedings, the unresolved issues between the Parties are closely analogous to those considered by the Bankruptcy Court in the Omnibus Proceedings, and Defendant's motion to dismiss incorporates all the arguments set forth by similarly situated defendants in the Omnibus Proceedings; and

**WHEREAS**, on March 9, 2016, the Trustee filed a Motion for Entry of Order Pursuant to Rules 15 and 21 of the Federal Rules of Civil Procedure, as Incorporated by Rules 7015 and 7021 of the Federal Rules of Bankruptcy Procedure, Granting the Trustee Leave to File a First Amended Complaint and for Related Relief (the "Motion for Leave to File a First Amended Complaint");

**IT IS HEREBY STIPULATED** by the undersigned herein, and ordered that:

1. In light of the Omnibus Motion to Dismiss Decision and the Supreme Court 546(e) Denial, and pursuant to Federal Rule of Civil Procedure 15(a)(2) and Federal Rule of Bankruptcy Procedure 7015, the Trustee has requested Defendant's consent to an amendment of the Trustee's Complaint in the form attached hereto as Exhibit A, which consent Defendant has provided. This Stipulation confirms Defendant's consent in this regard.

2. The Amended Complaint attached hereto as Exhibit A is hereby filed as of the date this Stipulation is So Ordered by the Court. Defendant shall file an answer to the Trustee's Amended Complaint within forty-five (45) days thereof. The Adversary Proceeding will move forward thereafter on a schedule to be established by further order of the Court after consultation among the Parties in accordance with the applicable rules of procedure.

3. The Trustee's Motion for Leave to File a First Amended Complaint is hereby withdrawn.

4. This Stipulation may be signed by the Parties in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same

instrument. A signed facsimile, photostatic or electronic copy of this Stipulation shall be deemed an original.

Dated: New York, New York  
March 18, 2016

Respectfully submitted,

Of Counsel:

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*Attorneys for Defendant David Ivan Lustig*

**SO ORDERED**

**Dated: March 18<sup>th</sup>, 2016**  
**New York, New York**

*/s/ STUART M. BERNSTEIN*  
**HONORABLE STUART M. BERNSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**